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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,352	05/21/2007	Hans Van Der Laan	081468-0356680	8164
909 7590 05/13/2009 PILLSBURY WINTHROP SHAW PITTMAN, LLP P.O. BOX 10500 MCLEAN, VA 22102				
EXAMINER				
TON, TRI T				
ART UNIT		PAPER NUMBER		
2877				
MAIL DATE		DELIVERY MODE		
05/13/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/590,352	Applicant(s) VAN DER LAAN ET AL.
Examiner TRI T. TON	Art Unit 2877

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: 13-15 and 34-36
Claim(s) rejected: 1-12, 16, 18-20, 22-33, 37 and 39-41
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

/Gregory J. Toatley, Jr./
Supervisory Patent Examiner, Art Unit 2877

Continuation of 3. NOTE: Response to Arguments

Continuation of 11. does NOT place the application in condition for allowance because: Response to Arguments

Applicant's arguments see pages 9-12, filed on 04/22/09, with respect to the rejection(s) of claim(s) 11 and 22 under 102(e) have been fully considered but are not persuasive.

First, with respect to Applicants' remarks on page 10, Miehler et al. (Publication No. US 2003/0048458) discloses comparing the obtained spectral measurement data with the calibration spectral measurement data ([0047], [0080], lines 7-13), (measured spectrum is not different from spectral measurement data, and simulated spectrum is not different from calibration spectral measurement data), to determine the unknown value ([0080], lines 12-13), (the error value is reduced to the specified value. The error value is not different from unknown value) of said at least one process parameter for said substrate from said obtained spectral measurement data (paragraph [0008]) by employing said regression coefficients of said mathematical model (paragraph [0060], [0080], claims 16, 17);

Second, with respect to Applicants' remarks on pages 10-11, Miehler discloses measure spectra being interpreted into shape parameter information ([0080], lines 1-3). This does not mean that shape parameter information is the same or not the same as spectral measurement data. Shape parameter information of measurement spectra is an only type of spectral measurement data. In other words, spectral measurement data could be shape parameter information or could be numeric parameter information.

Furthermore, Applicants did not disclose that spectral measurement data, which must be numeric data or could not be shape parameter information data. More importantly, even if the Applicants disclosed that spectral measurement data could not be shape parameter information data, the conflicts are shown on figure 4 of current application; whereas, according to this figure, calibration spectrum values are converted into shape information for comparing.

May, 06 20, 2009
Examiner /TTT/.